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Policymaking in the European Community
Since the Single Act

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1. Introduction: Placing the Single Act in Context

In the history of the European Community the second half of the decade of the 1980s is an extraordinary period of policy innovation and institutional activism, in sharp contrast with the decline of the 1970s but also qualitatively different from the dynamism of the 1960s. The great achievement of the sixties was the progress made in establishing the customs union, both internally and externally. The last remaining custom duties between the six founding member states were abolished, ahead of schedule, in 1968. However, this progress in negative integration was not matched by a corresponding forward movement in positive integration. With exception of agriculture and trade, little progress was made either in the development of the common policies called for by the Paris and Rome Treaties -- notably in the fields of transport and energy -- or in coordinating the economic and social policies of the member states.

The loss of momentum of the seventies may be explained, in part, by the joint impact of two severe economic crises and of the institutional strains imposed by the first enlargement of the Community. Economic recession weakened the determination of governments to resist demands for protectionist measures by domestic producers. Thus, even the process of removing technical barriers to trade slowed down considerably. Since 1974, a large number of proposals were held up in the Council because of objections

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and reservations expressed by the national governments. In policy areas like the liberalization of capital movements even the "acquis communautaire" seemed threatened when the application of some parts of the directives adopted at the beginning of the 1960s was suspended in a number of member states invoking safeguard clauses (Schmitt von Sydow, 1988).

The enlargement from six to nine members could only increase the "lourdeur" of Community decision making, especially in the light of the notorious Luxembourg compromise of January 1966. The effect of the compromise was that, by tacit agreement, the Council of Ministers hardly ever took decisions by majority vote despite the fact that the Rome Treaty provides such a procedure on a wide range of issues.

However, it would be wrong to assign to the national governments sole responsibility for the progressive loss of efficiency of Community institutions during this period. The attempt to achieve an integrated market by harmonising thousands of laws and regulations of six, nine, and finally twelve countries at various levels of economic development and with vastly different legal, administrative and cultural traditions, was bound to fail. In order to harmonise national legislations under Article 100 of the Treaty of Rome, a binding provision must generally already exist in at least one member state. As the EC Commission noted in 1980 in a communication to the European Parliament, "it is not hard to see how cumbersome is a procedure that requires Community consensus to solve a problem that could be created by one national civil servant working with two or three experts" (Commission of the Economic Communities, 1980:5).

According to the same document, "it has never been the Commission policy to harmonise for the sake of harmonisation". Indeed, the Commission added five years later, "a strategy based totally on harmonisation would be over-regulatory, would take a long time to implement, would

be inflexible and could stifle innovation" (Commission of the European Community, 1985:18). But this was precisely the strategy followed, with few notable exceptions, for nearly two decades. As Lord Cockfield once put it, in those years the Commission seemed to operate according to the rule: if it moves, harmonise it!

In short, the impasse reached at the end of the 1970s was due not only to external causes like economic crisis and the consequent revival of protectionism, but also, and more seriously, to basic flaws in the prevailing mode of Community policymaking and in the very philosophy of integration. These are the flaws which the Commission's White Paper on Completing the Internal Market (COM(85) 310 final) and the Single European Act (SEA) attempted to correct. While it is still too early to determine whether the corrections were sufficient to ensure the ultimate success of the enterprise, there is no doubt that the two documents introduced major conceptual and policy innovations. However, as the title of this paper suggests, the nature of these innovations is somewhat ambiguous. At one level, the internal market programme could be seen as a huge exercise in deregulation, its primary purpose being the opening up of previously protected markets and the removal of barriers to trade and free competition within the Community. But a closer examination of the programme reveals that although the language is borrowed from neoliberalism, the actual proposals often involve a high degree of regulation in terms of harmonization of basic standards. On balance, I shall argue, the 1992 programme is less an exercise in deregulation than in regulatory reform.

2. Policy innovation in the European Community: the Commission's White Paper

As soon as Jacques Delors was nominated for the presidency of the EC Commission, he began searching for an idea, a strategic concept capable of imparting new momentum to the

process of European integration. He considered several possibilities -- monetary union, increased cooperation in foreign and defense matters, institutional reform -- but after a tour of European capitals he reached the conclusion that completion of the internal market was the most promising programme for "relaunching" the Community.

To understand how this choice was made and how the Commission's White Paper eventually became one of the turning points in the history of the EC, we need to consider in general terms the relationship between conceptual innovation and policy development (Majone, 1989: 161-166).

The capacity of policymakers to respond to incessant change in economic conditions, political climate, and societal values depends crucially on the availability of a rich pool of ideas and proposals. The existing stock of ideas shapes the policymakers' response to events by defining the conceptual alternatives from among which they can choose. On what conditions will the production of new ideas be intense or slow, or more intense in one policy area than in another? Why are some proposals accepted while others are rejected or ignored? More generally, how is conceptual innovation linked to policy development?

To pose such questions is to suggest that policy development may be analyzed as the outcome of a dual process of conceptual innovation and of selection by political actors from the pool of available policy ideas. The locus of conceptual innovation will be called the policy community, while the political arena is the locus of selection.

A policy community is composed of specialists who share an active interest in a certain policy or set of related policies: academics, bureaucratic and interest-group experts, consultants, policy planners, opinion makers and, in some contexts, even judges. The members of a policy community represent different interests, hold different values and belong to different schools of thought, but they

all contribute to policy development by generating and debating new ideas and proposals. Note that although some members of the policy community may also be political actors, the two roles are distinct. A voter choosing in a referendum or a policymaker choosing among different options does not contribute to conceptual innovation; rather he or she acts as a mechanism for selecting from the pool of available variants. The whole political system, in fact, may be thought of as a large selection mechanism that picks out for acceptance those of the competing policy ideas that in some sense best meet the demands of the political environment.

The effectiveness of the selection procedure will depend on the rate and quality of conceptual innovation. Without a continuous stream of new proposals selection will have nothing to work on. Hence, the policy community must be sufficiently open and competitive so that truly novel variants may emerge. At the same time, selection can be effective only where the community is not too open. If each and every proposal were taken seriously, the burden for the selection mechanisms would soon become unbearable, leading to a breakdown of evaluative criteria. To avoid this, policy communities rely on various criteria to screen ideas that deserve further consideration. The final selection by political actors will usually be made from among the proposals that survive the screening. The most important screening criteria are: technical and economic feasibility, administrative simplicity, acceptability in the light of the values held by members of the policy community itself, and receptivity of the proposal by the political decision makers (Kingdon, 1984).

Different sources had contributed to the pool of ideas available to the new Delors Commission when it took office in January 1985: various services of the Commission itself; members of the European Parliament such as Altiero Spinelli's "Crocodile Group" and the more pragmatic "Kangaroo Group"; and groups of influential businessmen, at

times working with Commission officials, like the Thorn-Davignon Commission, the Roundtable of European Industrialists, and the Union des Confédérations de l'Industrie et des Employeurs d'Europe (UNICE).

Many ideas found in the White Paper and in the SEA itself can be traced back to proposals advanced by particular members of this transnational policy community. Thus in 1983 the Kangaroo group launched a public campaign for the adoption of a detailed timetable for the abolition of all non-tariff barriers within the EC, and in the following year the European Parliament adopted a resolution on the internal market based on an in-depth report, Toward European Economic Recovery in the 1980s by M.Albert and J.Ball. UNICE was a strong advocate of majority voting to increase the efficiency of Community decision making. Proposals for technology programmes and for European technical standards came from the Thorn-Davignon Commission, while the "Europe 1990" plan of Wisse Dekker, at the time chief executive officer of Philips, became the best known business plan for completing the internal market (Moravcsik, 1991). Several elements of the White Paper, from the idea of a target date to the emphasis on tax harmonization and the liberalization of government procurement policies, can already be found in Dekker's plan.

As already noted, the EC Commission was an early and very active participant in the policy debate on market integration. Already in 1981 it had presented a communication on "the state of the internal market" to the European Council, followed by a second communication on "relaunching the internal market" in 1982 and by a report on the "assessment of the functioning of the internal market" in 1983. In that same year a new Internal Market Council was created for the purpose of achieving a better coordination of activities related to the internal market. Experience had shown that the piecemeal approach of the specialized Councils -- i.e. of the Councils of ministers

of finance, agriculture, health, and so on, according to the issue under discussion -- made it difficult to synchronize work in order to put together package deals acceptable to all the member states (Schmitt von Sydow, 1988).

A lengthy stage of debate and persuasion is typical of most major policy innovations. As John Kingdon notes, "debate and persuasion are needed "to soften up" both policy communities, which tend to be inertia-bound and resistant to major changes, and larger publics, getting them used to new ideas and building acceptance for their proposals. Then when a short-run opportunity to push their [--i.e., policy entrepreneurs'] proposals comes, the way has been paved, the most important people softened up. Without this preliminary work, a proposal sprung even at a propitious time is likely to fall on deaf ears" (Kingdon, 1984:134).

Insert Table 1 here

Thus, it is not surprising that only one week after he took office, President Delors was able to announce to the Parliament the new Commission's intention to ask the European Council to pledge itself to completion of a fully unified internal market by 1992. Because of the work already done by the staff of the Commission and by other members of the policy community, the programme for "Completing the Internal Market" could be presented to the heads of government in the form of a white paper already on 14th June, 1985 and was endorsed by them at Milan on the 28th and 29th of the same month.

Recall now the selection criteria mentioned above: technical and economic feasibility; administrative simplicity; value acceptability; and political receptivity. The internal market programme satisfied those criteria much better than the other proposals that had been discussed, such as budgetary and institutional reform, reform of the

common agricultural policy, and economic and monetary union. The internal market programme required no additional spending from national or Community budgets, and no major reform of Community institutions. At the same time, the idea of eliminating hundreds of national regulations and technical barriers to trade was very attractive to influential members of the Commission like Lord Cockfield; to multinational companies; to the conservative government of Mrs.Thatcher but also to the French, German and Benelux governments; and to advocates of privatization and deregulation throughout Europe. Finally, the new strategy of mutual recognition (see next section) could be presented as the logical development of the laissez-faire doctrine developed by the European Court of Justice in the famous Cassis de Dijon judgement and in a number of related cases.

No other available alternative presented so many advantages or managed to skirt so many obstacles and potential pitfalls. Radical reform of the common agricultural policy did not seem, then as now, politically feasible. Budgetary and institutional reform were not sufficiently inspiring goals for the relaunching of Europe. On the other hand, economic and monetary union was certainly an attractive goal especially to the five Commissioners who had been ministers of finance in their national governments; but its economic and technical feasibility was uncertain while member states' fears regarding its political and financial impact made it difficult to draft a realistic timetable (Schmitt von Sydow, 1988).

In retrospect, the alternative finally chosen by President Delors appears to have been the only one with a sufficiently high probability of success. Careful attention to feasibility conditions and the long process of "softening up" of elite and public opinion apparently made the crucial difference between the prompt approval and smooth implementation of the internal market programme, and

the uncertainties and delays of the process of ratification of the Maastricht Treaty.

3. How deregulatory is the White Paper?

The two basic methods proposed by the Commission in order to complete the internal market by the target date of 1992 -- the "new strategy" of mutual recognition of national regulations and standards, and the "new approach" to harmonization -- are inspired by different regulatory philosophies. Hence the possibility of conflicting interpretations of the 1992 project. There is, in fact, a strong neoliberal flavour in the language used by the Commission, echoing the reasoning of the European Court of Justice in Cassis de Dijon, to justify the principle of mutual recognition:

> if a product is lawfully manufactured and marketed in one Member State, there is no reason why it should not be sold freely throughout the Community. Indeed, the objectives of national legislation, such as the protection of human health and life and of the environment, are more often than not identical. It follows that the rules and controls developed to achieve those objectives, although they may take different forms, essentially come down to the same thing, and so should normally be accorded recognition in all Member States ... What is true for goods, is also true for services and for people. (White Paper, point 58).

It has not escaped the attention of analysts that a strategy of mutual recognition of national regulations and standards entails competition among regulators. In turn, this could create the conditions for "social dumping" and "competitive deregulation" as each country attempts to gain advantages for its own industry and to attract foreign investments by lowering the level of regulatory constraints which firms must meet. Certainly, it is argued, it can be no coincidence that the warm endorsement of the proposals of the Commission by the member states was given at a time

when the ideology of competition and free markets dominated the thinking and, to some extent, the policies of governments throughout Western Europe.

However, the practical scope of the new strategy is immediately restricted: "in principle ... mutual recognition could be an effective strategy for bringing about a common market in a trading sense" (White Paper, point 63, emphasis added). But, the document continues,

> while a strategy based purely on mutual recognition would remove barriers to trade and lead to the creation of a genuine common trading market, it might well prove inadequate for the purposes of the building up of an expanding market based on the competitiveness which a continental-scale uniform market can generate. On the other hand, experience has shown that the alternative of relying on a strategy based totally on harmonization would be over-regulatory ... What is needed is a strategy that combines the best of both approaches but, above all, allows for progress to be made more quickly than in the past (White Paper, point 64).

Thus, the "new strategy" is not, after all, the strategy chosen by the Commission. The White Paper's focus on mutual recognition, as one of the drafters of the document admits, "is not motivated by ideological or political reasons, but by tactical and practical considerations, namely to reduce the Council's workload and to obtain rapid results" (Schmitt von Sydow, 1988: 96). A case of "reculer pour mieux sauter"? "Indeed, harmonization is not dead and may sooner or later start to flourish again. It has been relegated only in the specific context of the White Paper and its objective of abolishing all barriers to the free movement of goods, persons, services and capital. Mutual recognition achieves this objective, but it does not satisfy all aspirations of consumers and producers ... only harmonization can implement effective Community policies for e.g. the protection of the environment or can give the

Community a leading role in the fields of public health, technical security and consumer protection" (ib.:97).

The realization that mutual recognition did not signify the end, or even a significant limitation, of EC regulation may have led to Mrs.Thatcher's notorious Bruges speech in 1988. At any rate, the strategy actually followed by the Commission is a blend of several elements: an attempt to draw a clearer distinction between what is essential to harmonize and what may be left to mutual recognition of national regulations; legislative harmonization of national rules to be restricted to laying down essential health and safety requirements which will be obligatory in all member states; gradual replacement of national product specifications by European standards issued by the Comité Européen de la Normalisation (CEN) or by sectoral European organizations.

An excellent example of this original mix of deregulation (mutual recognition) and re-regulation (EC-wide harmonization of essential supervisory rules) is the Second Banking Directive (89/646/EEC) which becomes effective on January 1, 1993. The essential elements of this directive are the concept of a single banking license and the list of permissible banking activities. This list is very broad and includes activities, such as dealing in and underwriting securities, which American banks, for example, are prevented from entering into by the Glass-Steagall Act. Within the regulatory framework provided by the Second Banking Directive and by other more narrow directives harmonizing such things as the definition of own funds (capital) and solvency ratios, a European bank will need a single license from its home country to be allowed to establish branches or directly market financial services in any other EC country. With few exceptions, the host country has no power to seek further authorizations or exercise supervision. This is, of course, a direct consequence of the principle of mutual recognition.

What we have here, as in most other directives inspired by the new strategy, is deregulation at the national level combined with re-regulation at EC level. The apparently paradoxical combination of deregulation and re-regulation is what is meant by "regulatory reform". In this sense, the essence of the new strategy is neither deregulation nor even re-regulation but, more precisely, regulatory reform. In order to appreciate the real significance of the new regulatory philosophy introduced by the White Paper and the SEA, however, it is not enough to examine specific applications. One must also understand the key role played by regulation in the general system of Community policy making.

4. The European Community as regulator

It is becoming increasingly difficult to understand the domestic policies of member states without taking Community legislation into consideration. This is particularly true for economic and social regulation. I do not mean to suggest that EC regulators attempt to replace or even closely supervise national regulators. Such a goal would be politically infeasible at present, and would in any case require a large increase of specialist staffs in Brussels and the creation of European regulatory agencies and inspectorates.

Comparing national and Community rule making in a number of policy fields one can see instead two different regulatory systems, with the second designed to coordinate and complement rather than replace or challenge the first. At the same time, one must keep in mind that Community regulation, when agreed by the Council, has primacy over national legislation. Hence, regardless of the intentions of the Commission, national regulators tend to lose power in an increasing number of areas (Vipod, 1989).

Political scientists have paid insufficient attention to these developments. The vast literature on European integration and on policy-making in the European Community

contains very few studies of the political economy of regulation at the Community level. Given the importance of Community regulation in so many areas of economic and social life, from banking and technical standardization to environmental protection and health and safety at work, this scarcity of studies of EC regulatory policy making is surprising and can only be explained by the absence of a suitable theoretical framework.

As every student of the US political economy knows, in American regulation is a distinct type of policy making that has spawned a specialized theoretical and empirical literature; indeed, in political science and economics the study of regulation has been elevated to the rank of a subdiscipline. The situation is different in Europe. Here, despite the intensity of the debate about deregulation at the national and Community levels, research on the political economy of regulation is still a relatively new area of scholarship. Paradoxically, the study of deregulation has preceded the theory, if not the practice, of regulation.

There are several reasons why European social scientists have not developed anything comparable to the American theories of regulation. To begin with, the term itself is often used differently on the two sides of the Atlantic. In Europe there is a tendency to identify regulation with the whole realm of legislation, macro governance of the economy and social control. This broad use of the term makes the study of regulation coextensive with law, economics, political science, and sociology, and thus impedes the development of a theory of regulation as a distinct kind of policy making.

By contrast, within the framework of American public policy and administration, regulation has acquired a more specific meaning. It refers to "sustained and focused control exercised by a public agency over activities that are generally regarded as desirable by society" (Selznick, 1985:363). This definition has the advantage of making

explicit the two distinguishing features of American-style regulation. The reference to socially desirable activities excludes, for example, most of what goes on in the criminal justice system. At the same time, it suggests that market activities are "regulated" only in societies that consider such activities worthwhile in themselves and hence in need of protection as well as control. It follows that public regulation of markets is justified only by the existence of specific forms of "market failure": monopoly power, insufficient information, inadequate provision of public goods, or negative externalities such as environmental pollution.

The second characteristic -- sustained and focused control by a public agency -- implies that regulation is not achieved simply by passing a law, but requires detailed knowledge of, and intimate involvement with, the regulated activity. Hence the adoption of a regulatory mode of policy making implies the creation, sooner or later, of specialized agencies or commissions capable of fact finding, rule making, and enforcement. This tendency explains the recent growth of "regulatory offices" in Great Britain and "autorités administratives indépendantes" in France, and also various proposals of the EC Commission for the creation of specialized agencies in the areas of environment, health and safety at work, and testing of new medical drugs.

The fact that American-style regulation is becoming increasingly popular also in Europe is a direct consequence of the ideological, economic and technological changes of the past fifteen years. The long tradition of regulation in the United States -- which at the federal level goes back to the 1887 Interstate Commerce Act regulating the railroads -- expresses a widely held belief that the market works well under normal circumstances, and should be interfered with only in specific cases of market failure. In Europe, popular acceptance of the market ideology is a more recent phenomenon. For most of the period between the

great deflation of 1873-96 and the end of World War II, large segments of public opinion were openly hostile to the market economy, and skeptical about the capacity of the system to survive its recurrent crises. Hence in industry after industry the typical response of European governments to perceived cases of market failure was not regulation but nationalization, industrial reorganization, planning, or various forms of corporatist governance.

However, the limitations of traditional forms of state intervention became increasingly obvious in the post-war period, leading to the belief that the proper role of the state in the economic game is not that of a player, but of the rule-setter and umpire. At the same time, the growing interdependence of the world economy was making purely national regulations more or less irrelevant for a large number of policy areas. In retrospect, the need for EC-wide regulations seems obvious, but because of the conceptual, ideological and historical factors noted above, the implications have remained unnoticed for a long time, at least by political scientists.

Aside from competition policy and deregulatory measures necessary to the integration of national markets, few regulatory policies or programmes are specifically mentioned in the Treaty of Rome. Transport and energy policies which could have given rise to significant regulatory activities, have remained largely undeveloped. On the other hand, agricultural, regional and social policies which, together with development aid, absorb about 80 per cent of the Community budget, are mostly distributive rather than regulatory in nature.

How, then, can one explain the continuous growth of Community regulation, even in the absence of explicit legal mandates? Take the case of environmental protection, an area not even mentioned by the Treaty of Rome. In the two decades from 1967 to 1987, when the Single European Act finally recognized the authority of the Community to legislate in this area, almost 200 directives, regulations,

and decisions were introduced by the Commission. Moreover, the rate of growth of environmental regulation appears to have been largely unaffected by the political vicissitudes, budgetary crises, and recurrent waves of Europessimism of the 1970s and early 1980s. From the single directive on preventing risks by testing of 1969 (L68/19.3.69) we pass to 10 directives/decisions in 1975, 13 in 1980, 20 in 1982, 23 in 1984, 24 in 1985 and 17 in the six months immediately preceding passage of the Single European Act.

The case of environmental regulation is particularly striking, partly because of the political salience of environmental issues, but it is by no means unique. The volume and depth of Community regulation in the areas of consumer product safety, medical drug testing, banking and financial services and, of course, competition law is hardly less impressive. In fact, the hundreds of regulatory measures proposed by the Commission's White Paper only represent the acceleration of a trend set in motion decades ago. The continuous growth of supranational regulation is not easily explained by traditional theories of Community policy making. At most, such theories suggest that the serious implementation gap that exists in the European Community may make it easier for the member states, and their representatives in the Council, to accept Commission proposals which they have no serious intention of applying. The main limitation of this argument is that it fails to differentiate between areas where policy development has been slow and uncertain (for example, transport, energy or research) and areas where significant policy development has taken place even in the absence of a clear legal basis.

Moreover, existing theories of Community policy making do not usually draw any clear distinction between regulatory and other types of policies. Now, an important characteristic of regulatory policy making is the limited influence of budgetary limitations on the activities of regulators. The size of non-regulatory, direct-expenditure

programmes is constrained by budgetary appropriations and, ultimately, by the size of government tax revenues. In contrast, the real costs of most regulatory programmes are borne directly by the firms and individuals who have to comply with them. Compared with these costs, the resources needed to produce the regulations are trivial.

It is difficult to overstate the significance of this structural difference between regulatory policies and policies involving the direct expenditure of public funds. The distinction is particularly important for the analysis of Community policy making, since not only the economic, but also the political and administrative costs of enforcing EC regulations are borne by the member states.

As already noted, the financial resources of the Community go, for the most part, to the Common Agricultural Policy and to a handful of redistributive programmes. The remaining resources are insufficient to support large scale initiatives in areas like industrial policy, energy, research, or technological innovation. Given this constraint, the only way for the Commission to increase its role was to expand the scope of its regulatory activities.

Thus any satisfactory explanation of the remarkable growth of Community regulation must take into account both the desire of the Commission to increase its influence -- a fairly uncontroversial behavioural assumption -- and the possibility of escaping budgetary constraints by resorting to regulatory policy making. But this is only part of the explanation. Another important element is the interest of multi-national, export-oriented industries in avoiding inconsistent and progressively more stringent regulations in various EC and non-EC countries. Community regulation can eliminate or at least reduce this risk.

A similar phenomenon has been observed in the United States, where certain industries, faced with the danger of a significant loss of markets through state and local legislation, have strongly supported federal regulation ("preemptive federalism"). For example, the American car

industry, which during the early 1960s had successfully opposed federal emission standards for motor vehicles, abruptly reversed its position in mid-1965: provided that the federal standards would be set by a regulatory agency, and provided that they would preempt any state standards more stringent than California's, the industry would support federal legislation.

Analogous reasons explain the preference for Community solutions of some powerful and well-organized European industries. Consider, for example, the "Sixth Amendment" of Directive 67/548 on the classification, packaging, and labelling of dangerous substances. This amending Directive 79/831 does not prevent member states from including more substances within the scope of national regulations than are required by the Directive itself. In fact, the British Health and Safety Commission proposed to go further than the Directive by bringing intermediate products within the scope of national regulation. This, however, was opposed by the chemical industry, represented by the Chemical Industries Association (CIA) which argued that national regulation should not impose greater burdens on British industry than the Directive placed on its competitors. The CIA view eventually prevailed.

Similarly, German negotiators pressed for a European-wide scheme that would also provide the framework for an acceptable regulatory programme at home, wanted a full and explicit statement of their obligations to be defined at the EC level. Moreover, with more than 50 per cent of Germany's chemical trade going to other EC countries, German businessmen and government officials wished to avoid the commercial obstacles that would arise from divergent national regulations (Brickman, Jasanoff and Ilsen, 1985).

The European chemical industry had another reason for supporting Community regulation. In 1976 the United States, without consulting their commercial partners, enacted the Toxic Substances Control Act (TSCA). The new regulation represented a serious threat for European exports to the

lucrative American market. A European response to TSCA was clearly needed, and the Community was the logical forum for fashioning such a response. An EC-wide system of testing new chemical substances could serve as a model for negotiating standardized requirements covering the major chemical markets. In fact, the 1979 Directive has enable the Community to speak with one voice in discussions with the United States and other OECD countries, and has strengthened the position of the European chemical industry in ensuring that the new American regulation does not create obstacles to its exports. There is little doubt that the ability of the Commission to enter into discussions with the USA has been greatly enhanced by the Directive, and it is unlikely that each European country on its own could do so effectively (ib.:277).

5. The "deepening" of Community regulation

Even more impressive than its quantitative growth, and certainly more difficult to explain in traditional terms, is the increasing strictness or "deepening" of EC regulation. The SEA provided for the first time an explicit legal basis for environmental protection, and established the principle that environmental protection requirements shall be a component of the Community's other policies (Art.130 r(2), EEC). It also introduced the principle of qualified majority voting for occupational health and safety, and the notion of "working environment" which opens up the possibility of regulatory interventions in areas such as ergonomics which traditionally have been outside the field of health and safety at work. Finally, Art.100 a(3) urges the Commission to take a high level of protection as a base in its proposals relating to health, safety, environmental protection and consumer protection.

The Treaty of Maastricht, if ratified, will continue this development by establishing consumer protection as a Community policy, defining a role for the Community in public health -- especially in research and prevention --

and introducing qualified majority voting for most environmental legislation.

The qualitative deepening of EC regulation is revealed by several indicators (Majone, forthcoming), of which only two will be mentioned here. First, measures concerning health, safety and environmental and consumer protection no longer have to be justified by the goal of eliminating obstacles to trade and distortions of competition. Prior to the SEA, articles 100 and 235 of the Rome Treaty did indeed limit regulatory policy making to problems with a substantial economic impact. However, as Rehbinder and Stewart (1985) have pointed out, even before the SEA the thesis of the exclusive economic motivation of, for example, EC environmental law, was wrong because it ignored the fact that environmental priorities are set by the Community environmental programmes; and these are not based on narrow economic objectives, but seek to promote environmental quality as an important goal in its own right.

The second important indicator of "deepening" is the innovative character of some recent regulatory decisions. It used to be said that EC regulations, in order to be accepted by the member states, had to represent a kind of lowest common-denominator solution. The fact that national interests are strongly represented at each stage of Community policy making seemed to preclude the possibility of innovation, while giving a bargaining advantage to those member states which oppose high levels of protection. Hence the fear of "social dumping" often expressed by countries with advanced social legislation. According to the conventional wisdom, the Community could at best hope "to generalize and diffuse solutions adopted in one or more Member States by introducing them throughout the Community. The solutions of these Member States normally set the framework for the Community solution" (Rehbinder and Stewart, 1985: 213).

Even in the past this assessment was not quite correct (Majone, forthcoming). However, the most striking examples of regulatory innovation were made possible by the SEA, in particular by the introduction of qualified majority not only for internal market legislation but also for an important area of social regulation like health and safety at work. Thus, Directive 89/391 "on the introduction of measures to encourage improvements in the safety and health of workers", goes beyond the regulatory philosophy and practice even of advanced member states like Germany (Feldhoff, 1992). Among the notable features of this directive are its scope (it applies to all sectors of activity, both public and private, including service, educational, cultural and leisure activities); the requirements concerning worker information; the emphasis on participation and training of workers; and the very broad obligations imposed on employers (see Table 2).

Insert Table 2 here

Equally innovative are the Machinery Directive 89/392 and, in a more limited sphere, Directive 90/270 on health and safety for work with display screen equipment. Both directives rely on the concept of "working environment", and consider psychological factors like stress and fatigue important elements to be considered in a modern regulatory approach. For example, Annex I of the Machinery Directive states, inter alia, that "under the intended conditions of use, the discomfort, fatigue and psychological stress faced by the operator must be reduced to the minimum possible taking ergonomic principles into account". It is difficult to find equally advanced principles in the legislation of any major industrialized country, inside or outside the EC.

Such results cannot be explained merely by considering the legal powers of the Commission. Under the Treaty of Rome, the Commission is conceived of as the embodiment of communitarian interests whereas the Council is expected to

represent the point of view of the member states. However the practice of Community policy making has not always respected the equilibrium between supranational and national interests sought by the founders. In fact, the interests of the member states, and of the various economic and social groups within them, do not find expression only in the deliberations of the Council of Ministers. Although the Commission has an almost exclusive power to initiate legislation, its staff invariably formulates proposals only after extensive consultations with technical and bureaucratic experts from the member states. This early process of consultation is generally coordinated by the permanent national delegations. Once the Commission is considering proposals, comments and reservations of the national experts are subject to negotiations both informally and in the context of formal proceedings. The process is repeated at the level of the Committee of Permanent Representatives (COREPER) before going to the Council. Thus at least two complete cycles of consultation with national experts and representatives of interest groups take place before a Commission proposal goes to the Council.

Even more striking than the role of national experts in Community policy making is the almost complete dependence upon national authorities for implementation of Community rules. With a few exceptions such as the agricultural and competition policies, fact finding and enforcement are entrusted to the national administrations or to the courts of the member states. With a staff of only about 11500 people, of whom more than 1500 are interpreters and translators, the Commission is obviously not in a position to monitor the implementation of all the policies which it helps to initiate. Moreover, its small budget is insufficient to provide financial incentives for a better implementation of those policies by the member states.

For all these reasons many authors have argued that Community policy making is, in practice if not in theory,

dominated by the member states in all stages of the process: political initiative comes from the heads of state or governments (European Council); technical elaboration is provided by the national experts; political mediation takes place in the framework of COREPER; formal adoption is the prerogative of the Council of Ministers; implementation is in the hands of the national administrations (Krislov et al., 1986).

Formally, this picture is correct; substantively, it does not explain, for example, the leading role of the Commission in the preparation of the internal market programme, nor the results achieved in the field of health and safety at work and in other areas of social regulation not discussed in this paper (Majone, forthcoming). In an increasing number of instances, the Commission, usually with the support of the European Parliament, appears to be able to introduce significant innovations with respect to the policies of most or all member states. The model of a policy making system dominated by the interests of the most important member states clearly needs substantial revisions. Thus, the Machinery Directive was inspired by the regulatory philosophy of two small countries -- the Netherlands and Denmark who first introduced the concept of "working environment" into their legislations -- and opposed by Germany in an attempt to preserve the power of its own regulatory bodies (Feldhoff, 1992; Eichener, forthcoming).

6. Toward a more accurate model of EC policy making

A revised model of regulatory policy making in the Community must include two elements that have been largely overlooked by the received theories: first, the characteristic problems of "regulatory failure" which arise in an international context, limiting the usefulness of inter-governmental (rather than supranational) solutions; and, second, the fact that regulation is a very specialized

mode of policy making and, as such, requires a high degree of technical and administrative discretion.

If national regulators were willing and able to take into account the international repercussions of their choices; if they had perfect information of one another's intentions; and if the costs of organising and monitoring policy coordination were negligible, market failures with transboundary impacts could be managed in a cooperative fashion without the necessity of delegating powers to a supranational level. In fact, it is quite difficult to verify whether or not inter-governmental agreements are being properly kept. Because regulators lack information that only regulated firms have, and because governments are reluctant, for political reasons, to impose excessive costs on industry, bargaining is an essential feature of the process of regulatory enforcement. Regardless of what the law says, the process of regulation is not simply one where the regulators command and the regulated obey. A "market" is created in which bureaucrats and those subject to regulation bargain over the precise obligations of the latter (Peacock, 1984). Because bargaining is so pervasive, it may be impossible for an outside observer to determine whether or not an international regulation has been, in fact, violated.

When it is difficult to observe whether governments are making an honest effort to enforce a cooperative agreement, the agreement is not credible. For example, where pollution has international effects and fines impose significant competitive disadvantages on firms that compete internationally, firms are likely to believe that national regulators will be unwilling to prosecute them as rigorously if they determine the level of enforcement unilaterally rather than under supranational supervision. Hence the transfer of regulatory powers to a supranational authority like the EC Commission, by making more stringent regulation credible, may improve the behaviour of regulated firms. Also, because the Commission is involved in the

regulation of a large number of firms throughout the Community, it has much more to gain by being tough in any individual case than a national regulator: weak enforcement would destroy its credibility in the eyes of more firms. Thus it may be more willing to enforce sanctions than a member state would be (Gatsios and Seabright, 1989). In fact, the Commission has consistently taken a stricter pro-competition stance than national authorities like the British Monopolies and Mergers Commission, the German Bundeskartellamt, or the French Conseil de la Concurrence.

In short, the low credibility of inter-governmental agreements explains the willingness of member states to delegate regulatory powers to a supranational authority. At the same time, however, governments attempt to limit the discretion of the Commission by making it dependent on the information and knowledge provided by national bureaucrats and experts. We must now explain how the Commission often manages to overcome these limitations.

The offices of the Commission responsible for a particular policy area form the central node in a vast "issue network" that includes not only experts from the national administrations, but independent experts (also from non-EC countries), academics, public-interest advocates like environmentalists and leaders of consumer movements, representatives of economic and professional organizations and of regional bodies. Commission officials listen to everybody -- both in advisory committees, which they normally chair, and in informal consultations -- but are free to choose whose ideas and proposals to adopt. They operate less as technical experts alongside other technical experts, than as policy entrepreneurs, that is, as "advocates who are willing to invest their resources -- time, energy, reputation, money -- to promote a position in return for anticipated future gain in the form of material, purposive, or solidary benefits" (Kingdon, 1984: 188).

In his study of policy innovation in America, Kingdon identifies three main characteristics of successful policy

entrepreneurs: first, the person must have some claim to be taken seriously, either as an expert, as a leader of a powerful interest group, or as an authoritative decision maker; second, the person must be known for his political connections or negotiating skills; third, and probably most important, successful entrepreneurs are persistent (ib.: 189-90). Because of the way they are recruited, the structure of their career incentives, and the crucial role of the Commission in policy initiation, Commission officials usually display the qualities of a successful policy entrepreneur to a degree unmatched by national civil servants. Actually,

> the Commission officials' typical motivational structure is quite different from that of the average national government official. While the staff of the national governments is often recruited from persons who tend to be -- compared with their peers who choose an industrial career -- solid, correct, security-oriented, conservative, risk-averse and often somewhat narrow-minded, the Commission recruits its staff from people who are highly motivated, risk oriented, polyglot, cosmopolitan, open-minded and innovative... From the beginnings in the 1960s and up to the present, it has indeed been officials of a special type who chose to leave the relative security of their national administrations to go to Brussels to do there a well-paid but extremely challenging job ... The structural conditions of recruitment and career favour a tendency to support new ideas and to pursue a strategy of innovative regulation which attempts to go beyond everything which can presently be found in the Member States (Eichener, forthcoming: 51-52).

Because of this tendency to favour innovative regulatory solutions, even national experts may find the Community a more receptive forum for their ideas than their own administrations. The Machinery Directive offers a striking example of this phenomenon. The crucially important

technical annex of the directive was drafted by a British labour inspector who originally sought to reform the British regulatory approach. Having failed to persuade the policy makers of his own country, he brought his innovative ideas about risk assessment to Brussels, where they were welcomed by Commission officials and eventually became European law (ib.:52).

Moreover, what is known about the modus operandi of the advisory committees suggests that debates there follow substantive rather than national lines. A good deal of copinage technocratique develops between Commission officials and national experts interested in discovering pragmatic solutions rather than defending political positions. By the time a Commission proposal reaches the political level, first in COREPER and then in the Council of Ministers, all the technical details have been worked out and modifications usually leave the essentials untouched. The Council may of course delay a decision or reject the proposal outright, but these options are becoming increasingly problematic under the qualified majority rule and the "cooperation procedure" between the European Parliament and the Council introduced by the SEA. However, these institutional innovations are not by themselves sufficient to explain the relative autonomy of the Commission in regulatory matters. Two key characteristics of this mode of policy making must also be considered: regulation does not impose direct fiscal burdens on the national governments and thus does not generate as much controversy as fiscal issues in which winners and losers are more visible (Peters, 1992); on the other hand, drafting regulations requires expertise, and reliance on expertise entails granting the necessary administrative and technical discretion.

7. Conclusion: the changing role of the state

The nation states of Western Europe are being transformed by the impact of epochal changes in technology, economics

and ideology, but also by the steady, if uneven, progress of supranational integration. Although a new equilibrium configuration has yet to emerge, some of its main features are at least dimly visible.

In the economic sphere, the regulatory state is slowly replacing the entrepreneurial and dirigiste state of the past. Public policy no longer attempts to replace the market but rather tries to support it, while correcting its major failures. Even in countries where the presence of the state in the economy remains significant, governments begin to realize that operating a public service and regulating it are not only different, but also conflicting functions and hence should be institutionally separated. At the same time, the widespread skepticism in the ability of the state to act as entrepreneur, planner, employer of last resort and provider of services which the market could provide more efficiently, has not led to demands for a return to laissez faire, as the more radical advocates of privatisation and deregulation seemed to expect. In Europe, as in America, privatised and deregulated industries must still cope with antitrust laws, and with a host of ever stricter regulations to protect the environment, the interests of consumers, and the health and safety of workers. Rather than a return to laissez faire, voters seem to demand more focused and efficient public interventions, and better protection of diffused interests which the corporatist policies of the past neglected.

In the social sphere, traditional cleavages along class, party or religious lines are becoming less significant than new "transversal" divisions over cultural or regional diversity, citizen rights, the environment, the risks of modern technology, and other quality-of-life issues. The new priorities will eventually force governments to rethink the role of social policy in post-industrial societies. The European welfare state is the result of the social struggles of the past, and its

policies reflect the values of societies where the central issue was the distribution of the domestic product.

The question to be faced now is whether traditional welfare policies based on the universal provision of social services and large-scale transfer payments, are compatible with a serious commitment to the new priorities. Budgetary limitations are one obvious source of potential tensions: current estimates of the costs of various environmental programmes show that these represent a significant and growing percentage of GNP in all OECD countries. Sooner or later, therefore, voters have to face the choice between expanding or even continuing welfare programmes, and devoting sufficient resources to environmental protection and other types of social regulation. As shown by the example of the United States (a "welfare laggard" by European standards, but a pioneer in social regulation), social regulation is politically less controversial than welfare policies in countries where the ideology of free markets and consumer sovereignty receives widespread support. If this is true, also in Europe social regulation -- environmental and consumer protection, risk management, gender issues, health and safety at work -- may replace traditional welfare policies in the ranking of political priorities.

Finally, some of the institutional developments now taking place in Europe are hardly less far-reaching, even if less apparent, than the changes in economic and social priorities. Among the most significant trends are the continuing movement toward regionalisation or federalisation even in traditionally centralised countries like France, the United Kingdom, Spain and Italy; the replacement of corporatist by pluralist (or, in some cases, technocratic) arrangements for policymaking; the birth of judicial politics and policymaking in France (Stone, 1992) and elsewhere in Europe (Volcansek, 1992); and the rise of independent regulatory agencies.

This last development may appear to have only technical significance, but in reality is quite revealing of the changing nature of state-society relations. Independent agencies or commissions combining legislative, executive and judicial functions are foreign to the legal and administrative traditions of most European countries. As several scholars have pointed out, the creation of bodies characterized by their independence from the central administrations, by their technocratic expertise and, usually, by the collegiality of their decisions -- as an additional guarantee of independence and objectivity -- is a clear indication of the loss of legitimacy of the traditional channels of political power, and also of the inadequacy of the existing administrative structures to meet the new demands of economy and society (Guédon, 1991; Vesperini, 1990; Colliard and Timsit, 1988; Baldwin and McCrudden, 1987).

Directly or indirectly, the European Community is involved in all these transformations. To begin with the relations between state and market, it should be noted that the Treaty of Rome entails a certain amount of economic deregulation. A single European market cannot come into being and operate effectively without limiting the capacity of national governments to intervene in the economy for anticompetitive or protectionist goals. For example, under article 90 of the treaty, member states are obliged to open to competition markets previously reserved to their public enterprises or monopolies. In this respect, Community law has accelerated the trend toward privatisation and deregulation.

On the other hand, European voters are willing neither to accept a complete reversal of the principles of a "mixed economy", nor to transfer to Community institutions the powers necessary to carry out all the traditional functions of government. To resolve this dilemma, it will be necessary to find a compromise between these conflicting constraints, and as Jacques Pelkmans has rightly pointed

out, the regulation issue -- what, how, and at what level of government to regulate -- is the core of the emergent compromise (Pelkmans, 1989).

Not surprisingly, the social domain poses the greatest conceptual and political difficulties. This is because each society has found a different solution to the basic trade-off between economic efficiency and a more equal distribution of income and wealth. If it is true that the delicate value judgements about the appropriate balance of equity and efficiency which social policies express, can only be made legitimately within homogeneous communities, it follows that decision about income redistribution or the provision of "merit goods" should be taken at national or even subnational levels. This does not mean that the Community cannot have a "social dimension", at least if in this expression we include also those quality-of-life issues that form the object of social regulation.

In fact, for many years the Community has been addressing issues like consumer protection and equal treatment for men and women which national policies historically neglected. Even in areas of social regulation where national governments have been active for a long time, like product safety or health and safety at work, the EC has been able to achieve significant policy innovations.

To sum up, the progress of European integration will lead neither to a supranational welfare state nor to laissez faire or to the much feared phenomenon of "social dumping". Rather, redistributive and other traditional social policies will remain under the control of national governments -- subject to the constraints imposed by a European market where labour, capital, services and people are free to move -- while the Community will continue to play a leading role in economic and social regulation. As noted above, Community policies are designed to coordinate and complement rather than replace or challenge national ones. However, developments since the SEA suggest that in

an increasing number of fields, the capacity to innovate is shifting from the national to the supranational level.

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Table 1

Softening Up

Any rules liable to hinder directly or indirectly, immediately or in the future, intercommunity trade constitute a violation of the rules of Articles 30 et seq. of the EEC Treaty.
Any product legally manufactured and sold in a Member State must in principle be admitted to the market of any other Member State.

European Court of Justice: Judgement of 20 February 1979 in case No.120/78 ("Cassis de Dijon").

An approach based on the guidelines described [reference to the Cassis de Dijon judgement] would make it possible henceforth to put a stop to the application of a large number of national regulations insofar as these hinder trade between the Member States ... The removal of technical barriers to trade is one of the requirements for the establishment of the Community's internal market ... The Commission must therefore review the whole of its activities in connection with the removal of barriers to trade in the lights of the policies it intends to pursue.

Commission of the European Communities: Removal of Technical Barriers to Trade (Communication to the European Parliament of 24 January 1980), COM(80) 30 final.

Under the pressure of the economic crisis during the two recessions of the past seven years Member States have not completely withstood the temptation to yield to national protectionism. Among the measure which give rise to alarm ... are non-tariff and administrative barriers of all types -- in particular in the field of technical specifications and standards -- the tax limits, the constant overbidding in granting direct and indirect subsidies, the gaps in foreign trade policy -- and the increasing influence of Member States on procurement and on the general functioning of the market.

Commission of the European Communities: The State of the Internal Market (Communication to the Council of 17 June 1981) (COM(81)313 final).

The European Council echoed the alarm sounded by the Commission on the state of the internal market, which is increasingly threatened by intentional and unintentional barriers to trade and by the pervasive use of subsidies to ailing industries. The European Council agreed that a concerted effort must be made to strengthen and develop the free internal market for goods and services which lies at the very basis of the European Community and which is the

platform from which it conducts its common commercial policy.

Declaration of the European Council at its meeting of 29 and 30 June 1981, Bull.EC 6-1981, point 1.1.6.

Decision-making would be facilitated if a return were made to the following basic principles:

(a) European integration cannot succeed unless it is accepted that traditional systems of administration and supervision must be adapted to meet new situations and requirements;

(b) a common market cannot be viable without confidence in the common institutions;

(c) the Community must be able to make its presence felt in the field of technical barriers too.

Commission of the European Communities: Re-activating the European Internal Market (Communication to the Council of 15 November 1982) COM(82)735 final.

When new [national] acts or regulations are deemed necessary, it has not become the habit to draft instruments which create least difficulty as regards relations with the Community ... A more serious matter is the attitude of technical experts ... who "stand pat" on their arguments because they regard their country's way of doing things as so good that it cannot be altered for the sake of reaching a Community solution. The Commission has often found that such resistance can more easily be overcome when it is inspired by specific interests which can be evaluated and compensated in some way, than when it is merely a dogmatic reaction.

Commission of the European Communities: Assessment of the Function of the Internal Market (Report to the Council of 24 February 1983) COM(83)80 final.

Restoring confidence in the future of the internal market means above all restoring public confidence in the irreversibility of Community integration.
This decisive breakthrough will require neither new policies nor new budgetary resources. But what is needed is the adoption of a limited number of proposals that are already before the Council, the beneficial effects of which will far outweigh the adjustment efforts intrinsically associated with this dynamic venture.

Commission of the European Communities: Consolidating the Internal Market (Communication to the Council of 13 June 1984) COM(84)305 final.

Le Parlement européen
... impute la responsabilité de l'interruption de l'unification des marchés nationaux en un marché communautaire à l'absence de volonté politique, au manque de sens communautaire, aux habitudes nationales, aux

gouvernements des Etats membres représentés au Conseil des Communautés européennes mais aussi aux carences du Conseil européen, ainsi qu'à la procédure de décision au sein des instances communautaires ... invite par conséquent le Conseil à adopter sans délai les propositions concernant la réalisation du marché intérieur, approuvées par le Parlement dont certaines lui ont été présentées voici de nombreuses années...

Parlement Européen: Rapport sur la Nécessité de Réaliser le Marché Intérieur Européen du 26 mars 1984 (rapporteurs: MM J.Moreau et K.von Wogan) Doc.1-32/84.

Given the European Council's clear and repeated commitment to the completion of the common market, the Commission does not intend in this Paper to rehearse again the economic and political arguments that have so often led to that conclusion. Instead the Commission ... sets out here the essential and logical consequences of accepting that commitment, together with an action programme for achieving the objective.

Commission of the European Communities: Completing the Internal Market (White Paper from the Commission to the European Council of 14 June 1985) COM(85)310 final.

Table 2

Council Directive
of 12 June 1989
on the introduction of measures to encourage improvements in the safety and health of workers at work (89/391/EEC)

Article 6
General obligations on employers

1. Within the context of his responsibilities, the employer shall take the measures necessary for the safety and health protection of workers, including preventions of occupational risks and provision of information and training, as well as provision of the necessary organizations and means.

The employer shall be alert to the need to adjust these measures to take account of changing circumstances and aim to improve existing situations.

2. The employer shall implement the measures referred to in the first subparagraph of paragraph 1 on the basis of the following general principles of prevention:

(a) avoiding risks;

(b) evaluating the risks which cannot be avoided;

(c) combating the risks at source;

(d) adapting the work to the individual, especially as regards the design of work places, the choice of work equipment and the choice of working and production methods, with a view, in particular, to alleviating monotonous work and work at a predetermined work-rate and to reducing their effect on health.

(e) adapting to technical progress;

(f) replacing the dangerous by the non-dangerous or the less dangerous;

(g) developing a coherent overall prevention policy which covers technology, organizations of work, working conditions, social relationships and the influence of factors related to the working environment;

(h) giving collective protective measures priority over individual protective measures;

(i) giving appropriate instructions to the workers.

3. Without prejudice to the other provisions of this Directive, the employer shall, taking into account the nature of the activities of the enterprise and/or establishment:

(a) evaluate the risks to the safety and health of workers, **inter alia** in the choice of work equipment, the chemical substances or preparations used, and the fitting-out of work places.
Subsequent to this evaluation and as necessary, the preventive measures and the working and production methods implemented by the employer must:
- assure an improvement in the level of protection afforded to workers with regard to safety and health,
- be integrated into all the activities of the undertaking and/or establishment and at all hierarchical levels;

(b) where he entrusts tasks to a worker, take into consideration the worker's capabilities as regards health and safety;

(c) ensure that the planning and introduction of new technologies are the subject of consultation with the workers and/or their representatives, as regards the consequences of the choice of equipment, the working conditions and the working environment for the safety and health of workers;

(d) take appropriate steps to ensure that only workers who have received adequate instructions may have access to areas where there is serious and specific danger.

4. Without prejudice to the other provisions of this Directive, where several undertakings share a work place, the employers shall cooperate in implementing the safety, health and occupational hygiene provisions and, taking into account the nature of the activities, shall coordinate their actions in matters of the protection and prevention of occupational risks, and shall inform one another and their respective workers and/or worker's representatives of these risks.

5. Measures related to safety, hygiene and health at work may in no circumstances involve the workers in financial cost.

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